

TEXT OF PROPOSED REGULATIONS

THE SECRETARY AND THE CUPAs' RESPONSIBILITIES REGARDING THE STATE SURCHARGE

Department Reference Number: R-00-10

Amend Title 27, Section 15110 to read:

' 15110. What terms need to be clarified to understand the Unified Program regulations?

(a) For purposes of this Division, the following terms have the following meanings. All Health and Safety Code citations reference Division 20 unless otherwise specified.

Applicant Agency means a county, city or other local agency which is applying to the Secretary to become a Unified Program Agency.

Certified Unified Program Agency or CUPA is an agency which has been certified pursuant to the requirements of Chapter 6.11 and these regulations.

Consolidated Permit means those permits required to be consolidated pursuant to Health and Safety Code, Section 25404 (c) and other permits not specifically required by Health and Safety Code Section 25404 (c) but included within a Unified Program. The Consolidated Permit may be a single permit or multiple permits in a single package which shall minimize duplicate information.

Enforcement Actions. There are the following types of Unified Program enforcement actions:

(1) Formal Enforcement is an action which mandates compliance and initiates a civil, criminal, or administrative process which results in an enforceable agreement or order. Enforceable means the instrument creates an independent, affirmative obligation to comply and imposes sanctions for the prior failure to comply. Sanctions include fines and penalties as well as other tangible obligations, beyond returning to compliance, that are imposed upon the regulated. Examples include administrative orders and civil and criminal referrals to the appropriate prosecutor.

(2) Informal Enforcement is an action other than a formal enforcement action that notifies the regulated business of its non-compliance and establishes a date by which that non-compliance is to be corrected. Examples include a letter or notice of violation. Informal actions do not impose sanctions.

(3) Integrated or Multi-media Enforcement is a formal enforcement action involving either Unified Program and non-Unified Program agencies or involving more than one environmental medium (i.e.; air, water, soil). An integrated or multimedia enforcement requires more than one agency's involvement or one medium-specific action to bring about compliance or to abate, investigate, prosecute, or remediate the violations.

Inspection Categories. There are four (4) categories of Unified Program inspections. One inspection may be reported in more than one category:

(1) Single Program Inspection is an inspection of a regulated business conducted by one inspector for only one Unified Program element.

(2) Combined Inspection is an inspection of a regulated business conducted by one inspector representing two or more Unified Program elements or other program elements.

(3) Joint Inspection is an inspection of a regulated business, conducted by two or more inspectors representing different Unified Program Agencies within a CUPA, specifically to evaluate operations within the expertise of those regulatory agencies.

(4) Integrated or Multi-media Inspection is an inspection either involving Unified Program and non-Unified Program Agencies and/or involving more than one environmental medium (i.e., air, water, soil) of a regulated business that results in consolidating inspections.

Inspection Types. There are two (2) types of Unified Program inspections, which for reporting purposes are mutually exclusive:

(1) Routine Inspection is a regularly scheduled inspection to evaluate compliance pursuant to one or more program elements.

(2) Other Inspection includes, but is not limited to, regulatory field activity such as complaint investigations, enforcement follow-up, closures, tank installation and/or removal oversight, tank cleaning, and release investigations. It does not include routine inspections or field or site visits whose principle purposes are informational or educational, pollution prevention education, verification of administrative information or orientation of new owners or operators. A Other Inspection also includes verification inspections for the administrative requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

Participating Agency is an agency which has a formal agreement with the CUPA to implement and enforce a program element as part of the Unified Program.

Program Element is a program listed in Health and Safety Code, Section 25404(c), or it may be a program other than those mandated in Health and Safety Code, Section 25404 (c) which is voluntarily consolidated into a Unified Program, to be carried out in conjunction with a program listed in 25404(c).

Regulated Business means any of the following:

(1) A person as defined in: (A) the Hazardous Waste Management Program, Health and Safety Code, Chapter 6.5, Section 25118 and (B) the California Hazardous Substances Tax Law, Revenue and Taxation Code Part 22, Division 2, Section 43006.

(2) A business as defined in the Hazardous Materials Emergency Response Plan and Inventory (Business Plan) program, Health and Safety Code, Chapter 6.95, section 25501(d).

(3) A facility as defined in the Underground Storage Tank Program, Health and Safety Code, Chapter 6.7, Section 25281(e).

(4) A tank facility as defined in the Aboveground Storage Tank Program, Health and Safety Code, Chapter 6.67, Section 25270.2(l).

(5) A hazardous waste facility as defined in the Hazardous Waste Management

Program, Health and Safety Code, Chapter 6.5, Section 25117.1.

(6) A stationary source as defined in the California Accidental Release Prevention Program, Health and Safety Code, Chapter 6.95, Section 25532(k).

Responsible Agency is the Certified Unified Program Agency (CUPA) or participating agency (PA), which implements a particular program element of the Unified Program.

Service charge means surcharge as defined in Section 25404.5(b) of the Health and Safety Code.

Unified Program Data Dictionary (data dictionary) defines data elements, data field size and type, and edit criteria for regulatory data that shall be collected and retained by a CUPA. It has the following sections:

(1) Business Section: for information reported from businesses to CUPAs.
[Appendix C]

(2) CUPA Section: for CUPA-to-State reporting of CUPA activities or other information that shall be collected and retained by a CUPA and reported pursuant to Section 15290. [Appendix D]

Unified Program Consolidated Form (UPCF) is a form used by Unified Program regulated businesses to provide a standardized document to satisfy numerous business-to-CUPA reporting requirements. It consolidates information regulated businesses are required to provide for different program elements to the CUPA. It incorporates or replaces previous state and local forms for Unified Program program elements. The UPCF consists of the sections described in Section 15410 and is found in Appendix E.

NOTE: Authority cited: Section 25404(b), (c), (d) and (e) and ~~25404.6(c)~~, Health and Safety Code. Reference: Sections ~~25117.1, 25118, 25270.2(d) and (e), 25281(l), 25404 (c) and (d), 25404.1(a) and (b)(3), 25404.3(d)(4), 25404.5(a) and (b), 25404.6(c), 25501(d) and 25532(k)~~, Health and Safety Code; Section 43006, Revenue and Taxation Code; and the 1996 United States Environmental Protection Agency Enforcement Response Policy for the Resource Conservation and Recovery Act.

Amend Title 27, section 15240 to read:

' 15240. What is the State's responsibility with regard to the Surcharge?

(a) The Secretary shall determine the annual surcharge based on the assumptions, calculations, and supporting data that justify the reasonable and necessary costs of CUPA oversight and program element management by state agencies with responsibilities under the Unified Program.

(1) The Secretary shall determine the amount of the surcharge based upon information received from each state agency responsible for activities under Health and Safety Code, Division 20, Chapter 6.11.

(2) Each state agency responsible for activities under Health and Safety Code, Division 20, Chapter 6.11 shall submit to the Secretary ~~annually~~, on a date specified by the Secretary, ~~but not later than February 1~~, its projected reasonable and necessary costs, including the detailed supporting information ~~for the upcoming fiscal year~~ to carry out responsibilities under Health and Safety Code Division 20, Chapter 6.11.

(3) Reasonable and necessary costs shall include but are not limited to, the costs of bad debts, and uncollected fees.

(b) The Secretary shall ~~review annually, and revise if necessary, adopt a schedule~~ for the state surcharge to be assessed on regulated persons. ~~businesses~~. The surcharge shall not be revised more than once per year. A regulated person ~~business~~ that is covered by more than one category of the definition of regulated business in multiple subsections of the definition, Section 15110(a)(40), shall be counted as one regulated business.

(c) The Secretary shall determine the amount of state surcharge to be assessed on each regulated person in order to cover the necessary and reasonable costs of the state agencies pursuant to Health and Safety Code Section 25404.5(b) in carrying out their responsibilities under Division 20, Chapter 6.11. ~~business by setting the following components, as necessary.~~

(1) ~~A component for oversight of each CUPA assessed on all regulated businesses pursuant to Health and Safety Code Section 25404.5(b). This oversight fee includes the necessary and reasonable costs of the Governor's Office of Emergency Services and the California State Fire Marshal excluding the costs contained in subsection (3)(A).~~

(A) ~~This component is calculated by dividing the total necessary and reasonable costs of the Governor's Office of Emergency Services and the California State Fire Marshal for oversight by the total number of regulated businesses reported by all CUPAs in section 15210(d). The number of regulated businesses does not count businesses in those counties who have a waiver of assessing the surcharge granted by the Secretary under the provisions of Health and Safety Code, Section 25404.5(d).~~

(2) ~~A component assessed on regulated businesses for each underground storage tank which meet the criteria of Health and Safety Code Sections 25281(x) and 25287.~~

~~This covers the necessary and reasonable costs of the State Water Resources Control Board.~~

~~(A) This component is calculated by dividing the total necessary and reasonable costs of the State Water Resources Control Board for oversight by the total number of underground tanks reported by all CUPAs in section 15210(d). The number of regulated businesses does not count businesses in those counties who have a waiver of assessing the surcharge granted by the Secretary under the provisions of Health and Safety Code, Section 25404.5(d).~~

~~(3) A component assessed on businesses regulated under the Health and Safety Code Section 25531 et seq, the California Accidental Release Prevention program. This component is authorized by Health and Safety Code Section 25531.2 and Section 25404.5 (b). It covers the necessary and reasonable costs incurred by the Governor's Office of Emergency Services for the implementation of the California Accidental Release Prevention program.~~

~~(A) This component is calculated by dividing the total necessary and reasonable costs of the Governor's Office of Emergency Services for implementing the California Accidental Release Prevention program by the total number of businesses regulated by the California Accidental Release Prevention program. The number of regulated businesses does not count businesses in those counties who have a waiver of assessing the surcharge granted by the Secretary under the provisions of Health and Safety Code, Section 25404.5(d).~~

~~(d) The Secretary shall resolve those state surcharge disputes which cannot be resolved locally pursuant to Section 15250(d).~~

~~(e) The Secretary shall publish the tentative amendments to the state surcharge annually not later than March 1, shall publish the final state surcharge annually not later than September 30 in the California Regulatory Notice Register and accept comments on the proposed surcharge for 30 days.~~

~~(f) Following the 30 day comment period required in subsection (e) for this section, the Secretary will publish the final surcharge in the California Regulatory Notice Register.~~

~~(g) Sixty days following the publishing of the final surcharge in the California Notice Register, the CUPAs shall be responsible for collecting the new surcharge as part of their Single Fee System.~~

NOTE: Authority cited: Sections 25404(b) and (d), 25404.6(c), and 25531.2, Health and Safety Code. Reference: Section 25404.5(b) and (d), Health and Safety Code.